

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
September 16, 2003 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Charles W. Falwell, Board member, presided. No other Board members were present.

Jennifer Kazzie appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc=Disciplinary Case
Lic=Licensing Application
RF=Recovery Fund Claim
Trades=Tradesmen Application

C=Complainant/Claimant
A=Applicant
R=Respondent/Regulant
W=Witness
Atty = Attorney

Participants

1. Bruce Benishek
t/a Benishek Home Imp
File Number 2002-02678 (Disc)
2. Dynamic Remodeling
File Number 2003-01178 (Disc)
3. Mark S. Carlson
t/a Mark Carlson Well Pump Service
File Number 2002-03219 (Disc)
4. John K. Ray
t/a Vision Construction Services
File Number 2002-01065 (Disc)
5. Raymond A. Horton Jr.
t/a Cherry Hill Contracting
File Number 2003-01253 (Disc)
6. Johnson & Johnson Construction
t/a J&J Construction

Benishek - R

Dennis Hetzel – C


Robert Smith, Environmental
Health Inspector - C

Ray – R
Robert Henley – R Atty


Bryan Bache - C
Lisa Cobert - W

The meeting adjourned at 2:30 p.m.

BOARD FOR CONTRACTORS



Mark D. Kinser, Chairman



Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: BRUCE BENISHEK, T/A BENISHEK HOME IMPROVEMENT
LICENSE NUMBER 2705-004583

FILE NUMBER: 2002-02678

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 16, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Bruce Benishek, t/a Benishek Home Improvement on August 20, 2003. The following individuals participated at the conference: Bruce Benishek, Respondent; Jennifer Kazzie, Staff Member; and Charles W. Falwell, Presiding Board Member.

File Number 2004-00705 (Lic)
No IFF held.

- | | |
|---|-------------------|
| 7. Kyle Harris t/a Kyle Harris Construction File Number 2003-03533 (Lic) | Harris – A |
| 8. William A. Reynolds File Number 2004-00211 (Trades) | Reynolds – A |
| 9. David C. Alderman t/a L & D Home Improvement Construction File Number 2002-03444 (Disc) | None |
| 10. Kidd and Co Inc. t/a Kidd Custom Homes/Underground Services First File Number 2003-00801 (Disc) | Kimberly Kidd – R |

Summation of Facts

1. On or about June 8, 2000, Joseph and Sharon Fink (the Finks) entered into a contract with Bruce Benishek (Benishek), t/a Benishek Home Improvement, in the amount of \$31,626.00, for the construction of an addition to the master bedroom, including a bathroom, replace the deck boards and add steps to the deck, and re-roof the entire house at 20408 Arbuckle Road, Bergton, Virginia.
2. The contract used by Benishek failed to contain the minimum provisions required by the Board's 1999 Regulation 18 VAC 50-22-260(B)(8), subsections (a) when work is to begin and the estimated completion date, (e) a statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning, (h) contractor's license class and specialty service, and (i) a statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.
3. The Finks paid Benishek \$26,100.00.
4. Between September 2000 and October 2001, Benishek performed work. As of October 2001, Benishek failed to return, leaving the last row of shingles incomplete, the windows in the bedroom do not close properly, the bathroom shower needs sealing, some of the baseboard trim in the recreation room was not installed, there is no flashing around the chimney, the ceiling tiles have not been installed around three of the posts in the recreation room, and the deck step pickets need to be spaced closer together.
5. The contract specified, "Install shower, sink (Pedestal) & commode and all applicable plumbing and lighting and vents."
6. On or about April 8, 2002, Boyd Lam (Lam), Rockingham County Building Official, told Investigator Carolyn D. Wright, the Board's agent, that Benishek failed to obtain a plumbing permit for the subject work as required by Section 107.1 of the Virginia Uniform Statewide Building Code. Lam told the Board's agent that Benishek obtained an electrical permit for the installation of switches, lighting, receptacles, and light fixtures. Robbie Smith, Benishek's employee, performed the electrical work.
7. On or about March 7, 2002, the licensing records of the Board for Contractors revealed Bruce Benishek, t/a Benishek Home Improvement, was issued Class B Contractor's license number 2705004583, with the building (BLD) contracting classification.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(8) (Effective May 1, 1999)

Benishek's failure to make use of a legible contract that contains all provisions specified by the Board is in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend a monetary penalty of \$250.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(12) (Effective May 1, 1999)

Benishek's failure to complete the work contracted for is in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(12). Therefore, I recommend a monetary penalty of \$250.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(6) (Effective May 1, 1999)

Benishek's failure to obtain the required permit is in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 4: 18 VAC 50-22-260(B)(23) (Effective May 1, 1999)

Benishek's conduct of performing electrical and plumbing work outside its license classification and specialty is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(23). Therefore, I recommend a monetary penalty of \$500.00 be imposed. In addition, I recommend Benishek successfully complete the Board's Basic Contracting Licensing Class (remedial education) within six months of the entry of the order.

By:

Charles W. Falwell
Presiding IFF Board Member
Board for Contractors
Date: September 16, 2003

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC

SUSPENSION OF LICENSE NUMBER 2705-004583 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: DYNAMIC REMODELING, INC.
LICENSE NUMBER 2705-052777**

FILE NUMBER: 2003-01178

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 16, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Dynamic Remodeling, Inc., Attn: V. Ishairzay on August 20, 2003. The following individuals participated at the conference: Dennis Hetzel, Complainant; Jennifer Kazzie, Staff Member; and Charles W. Falwell, Presiding Board Member. No one appeared on behalf of Dynamic Remodeling, Inc.

Summation of Facts

1. On or about October 10, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Dennis W. Hetzel (Hetzel) regarding a contract entered into with Dynamic Remodeling, Inc.
2. On or about June 29, 2002, Hetzel entered into a contract with Dynamic Remodeling, Inc. (Dynamic), in the amount of \$6,000.00, for the installation of a TimberTech deck at Hetzel's house at 3705 Mazewood Lane, Fairfax, Virginia.
3. A review of the licensing records of the Board for Contractors on October 15, 2002, revealed Dynamic Remodeling was issued Class A Contractor's license number 2705052777 on October 4, 1999. A current review of the Board's licensing records reveal a name change on May 20, 2003, to Dynamic Remodeling, Inc.

4. Dynamic failed to operate in the name in which the license was issued.
5. The contract used by Dynamic in the transaction failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsection (h) contractor's license expiration date and specialty service.
6. On June 29, 2002, Hetzel paid Dynamic \$2,000.00 by check, as a deposit.
7. Between September 9, 2002, and October 10, 2002, Hetzel sent several letters to Dynamic requesting the \$2,000.00 deposit be refunded for failing to commence work and delaying the work.
8. As of February 12, 2003, Dynamic failed to return Hetzel's deposit, perform any work, or deliver any materials.
9. On December 13, 2002, Investigator Carolyn D. Wright, the Board's agent, visited 5725 Centre Square Drive, Centreville, Virginia, the address of record for Dynamic, and left a business card at the door. On December 18, 2002, the Board's agent mailed a letter to Dynamic at the address of record, with a copy of the subject complaint, requesting a response to the complaint and to produce documents by December 24, 2002.
10. On January 2, 2003, Mark Jain (Jain), part owner of Dynamic, left a voice mail message for the Board's agent that he had received the Board's agent's business card and letter. Jain also stated that he needed additional time to respond. On January 7, 2003, Jain stated to the Board's agent that he would provide a written response by January 14, 2003.
11. As of February 12, 2003, Dynamic failed to produce documents, as requested by the Board's agent.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-230(A) (Effective September 1, 2001)

Failure by Dynamic to operate under the name in which the license is issued is in violation of the Board's 2001 Regulation 18 VAC 50-22-230(A). Therefore, I recommend a monetary penalty of \$100.00 be imposed. In addition, I recommend Dynamic successfully complete the Board's Basic Contracting Licensing Class (remedial education) within six months of the entry of the order.

Count 2: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)

Failure by Dynamic to use a contract containing the minimum provisions required is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend a monetary penalty of \$250.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

The retention of funds by Dynamic for which work was not performed is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(16). Therefore, I recommend a monetary penalty of \$1,500.00 be imposed.

Count 4: 18 VAC 50-22-260(B)(12) (Effective September 1, 2001)

Failure by Dynamic to respond or produce documents requested by the Board's agent is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(12). Therefore, I recommend a monetary penalty of \$1,500.00 be imposed.

By:

Charles O. Falwell
Presiding IFF Board Member
Board for Contractors
Date: September 16, 2003

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705-052777 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**RE: MARK S. CARLSON, T/A MARK CARLSON WELL PUMP SERVICE
LICENSE NUMBER 2705-011703**

FILE NUMBER: 2002-03219

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 16, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Mark S. Carlson, t/a Mark Carlson Well Pump Service on August 20, 2003. The following individuals participated at the conference: Robert Smith, Environmental Health Inspector, Chesapeake Health Department, Complainant; Jennifer Kazzie, Staff Member; and Charles W. Falwell, Presiding Board Member. No one appeared on behalf of Mark Carlson Well Pump Service.

Summation of Facts

1. On or about April 29, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received information from Robert L. Smith (Smith), the Environmental Health Supervisor, Chesapeake Health Department regarding Mark S. Carlson (Carlson), t/a Mark Carlson Well Pump Service.
2. On or about April 25, 2002, Smith, on behalf of the Chesapeake Health Department, issued 48 notices of violations against Carlson, for violation of Section 3.10 of the Code of Virginia, "Private Well Regulations VR 355-34-100."

The notices of violations revealed that Carlson failed to submit copies of the Uniform Well Completion Report (GW2-WWCR), to the Health Department within 30 days of the completion of the well or completion of alterations to the well for work performed by Carlson from 1997 through 2000 in the Chesapeake area.

3. On or about June 10, 2002, Smith issued 17 notices of violations against Carlson, for violation of Section 3.10 of the Code of Virginia, "Private Well Regulations VR 355-34-100."

The notices of violations revealed that Carlson failed to submit copies of the Uniform Well Completion Report (GW2-WWCR), to the Health Department within 30 days of the

completion of the well or completion of alterations to the well for work performed from 2001 through 2002 in the Chesapeake area.

4. On or about June 19, 2002, Smith issued 21 notices of violations against Carlson, for violation of Section 3.10 of the Code of Virginia, "Private Well Regulations VR 355-34-100."

The notices of violations revealed that Carlson failed to submit copies of the Uniform Well Completion Report (GW2-WWCR), to the Health Department within 30 days of the completion of the well or completion of alterations to the well for work performed from 1997 through 2000 in the Chesapeake area.

5. The Chesapeake Health Department attempted to prosecute Carlson by forwarding several notice of violation letters, attempting to make contact by telephone, on several occasions, specific dates unknown, and through legal action, with negative results as Carlson was noncompliant. Carlson does not accept any correspondence sent by the Chesapeake Health Department.

6. As of February 14, 2003, Carlson has not complied with repeated requests to submit proper paperwork when he finished installing irrigation wells, so the Health Department can perform final inspections.

Conclusion and Recommendation

Count 1: Code of Virginia §54.1-1106.1 - Three Violations

Failure by Carlson, after repeated requests, to provide the proper paperwork in order for the Health Department to make their final inspections, as noted on April 25, 2002, June 10, 2002, and June 19, 2002, is in violation of the Code of Virginia Section 54.1-1106.1.

As the presiding Board Member, it is my opinion that in order to insure the protection of the water table, it is essential that the Health Department have records of all drilled wells, by the completion of the GW-2 form.

Therefore, in consideration of §54.1-1106.1, I recommend a total monetary penalty of \$1,000.00 be imposed. I further recommend revocation of Carlson's license, but to waive imposition of the revocation provided Carlson satisfies all requirements of the Chesapeake Health Department within 120 days from the entry of the order. In addition, proof of compliance with the Chesapeake Health Department must be provided to the Board, in a form acceptable to the Board within the 120 days. Such documentation shall include a letter from the Chesapeake Health Department indicating compliance by Carlson.

By:

Charles W. Falwell

Presiding IFF Board Member
Board for Contractors
Date: September 16, 2003

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705-011703 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

In Re:

John K Ray, t/a Vision Construction Services
Richmond, Va 23228

File Number 2002-01065
License Number 2705061563

CONSENT ORDER

Respondent John K Ray, t/a Vision Construction Services ("John K Ray") was at all times material to this matter a licensed Class A Contractor in Virginia (No. 2705061563).

As a result of this status, John K Ray recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

A violation of these Regulations has been reported and investigated. These matters were considered on September 16, 2003 in an Informal Fact Finding Conference ("IFF") pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended. This IFF was held in Richmond, Virginia and was attended by John K. Ray and his attorney, Robert Henley. Board Member Charles W. Falwell presided at the IFF.

The Board's duly designated representative has found sufficient evidence to believe that:

1. On or about May 21, 2001, David Lewis (Lewis) entered into a contract with John K. Ray (Ray), t/a Vision Construction Services, in the amount of \$38,000.00, for the construction of a 30' x 40' garage, according to specifications shown as Exhibit A with the contract, at 6433 Gaulding Road, Mechanicsville, Virginia. At the time of the contract, Lewis paid Ray \$15,000.00.

2. The contract used by Ray in the transaction failed to contain all the provisions required by the Board's 1999 Regulation 18 VAC 50-22-260(B)(8), subsections (a) when work is to begin and the estimated completion date, (d) a "plain language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance, (e) a statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning, (f) disclosure of cancellation rights of the parties, and (h) contractor's license expiration date.

3. Prior to July 2001, Ray demolished the existing garage and placed the foundation and concrete pad for the new garage. On or about July 2001, Ray left the job and failed to return to do any further work on the project. On or about August 2001, Ray told Lewis that he was experiencing family problems and that he was going out of business. During the IFF, Ray stated he is now working as a superintendent for Lifestyle Homes, LLC and would like to continue to hold a Class A license.

4. During the IFF, Ray stated that he attempted to find another contractor to complete the work that was contracted for. Ray put the complainant, David Lewis, in touch with Mr. William Bulifant and assumed terms were agreed upon. Ray felt that his obligation at this point was complete. Ray did not realize that the work was not completed until legal action was initiated against him by Lewis. During the court proceedings, Lewis testified that he hired a former subcontractor of Ray's to complete the work.

The Board and John K Ray, as evidenced by the signatures affixed below, enter into this Consent Order. John K Ray knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

Further, by signing this Consent Order, John K Ray acknowledges an understanding of the charges. John K Ray hereby admits to the violation(s) of the Board's Regulations and consents to the following term(s) by the Board:

Count 1: 18 VAC 50-22-260(B)(8) (Effective May 1, 1999)

Ray's failure to make use of a legible written contract that contains all the provisions specified in the regulation is a violation of Board Regulation 18 VAC 50-22-260(B)(8) (Effective May 1, 1999). Therefore, I recommend a monetary penalty of \$250.00 and remedial education be imposed.

In addition, I recommend Ray successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 2: 18 VAC 50-22-260(B)(12) (Effective May 1, 1999)

Ray's failure to complete work is in violation of Board Regulation 18 VAC 50-22-260(B)(12) (Effective May 1, 1999). Therefore, I recommend a monetary penalty of

\$1,750.00 be imposed. Upon receipt of documentation supporting completion of the contract, in a form acceptable to the Board, the Board will waive imposition of \$1,500.00 of the monetary penalty. Such documentation must be provided to the Board within thirty days of the effective date of this order.

The above monetary penalties, costs or sanctions are to be paid/performed within thirty days of the effective date of this consent order. John K Ray acknowledges the monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, John K Ray will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

John K Ray acknowledges that failure to pay the penalty, the costs, or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of John K Ray's license until such time as there is compliance with all terms of this Order. John K Ray understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

John K Ray
t/a Vision Construction Services

Date

Printed Name and Title of Person Signing on behalf of Entity

REVIEWED AND APPROVED:

Robert Henley, Esquire

Date

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this _____ day of _____, 2003.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this _____ day of _____, 2003.

Board for Contractors

BY: _____
Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of the Records

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: RAYMOND A. HORTON, JR.
T/A CHERRY HILL CONTRACTING
LICENSE NUMBER 2705 068255**

FILE NUMBER: 2003-01253

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 16, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Raymond A. Horton, Jr., t/a Cherry Hill Contracting on August 19, 2003. The following individuals participated at the conference: Bryan K. Bache, Complainant; Lisa Cobert, Witness; Jennifer Kazzie, Staff Member; and Charles W. Falwell, Presiding Board Member. Neither Horton, nor anyone on his behalf, appeared at the IFF.

Background

On October 31, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Bryan K. Bache (Bache) regarding a contract entered into with Cherry Hill Contracting Company.

On September 30, 2002, Bache entered into a contract with "Cherry Hill Contracting Company," in the amount of \$4,080.00, for the installation of 30 year shingles on the house, shed and garage at Bache's residence at 19706 Mt. Dumpling Road, Culpeper, Virginia. The contract specified contractor's license number 2705068255.

On April 8, 2003, the licensing records of the Board for Contractors revealed Raymond A. Horton Jr. (Horton), t/a Cherry Hill Contracting, was issued Class C Contractor's license number 2705068255 on April 8, 2002, as a sole proprietorship.

Summation of Facts

1. The contract used by Horton in the transaction failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260 (B)(8), subsections (d) a 'plain language' exculpatory clause, (e) a statement of assurance regarding local requirements for building permits, inspections and zoning, (h) the contractor's expiration date, class of license and classification or specialty services and (i) a statement providing that any modification to the contract which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.
2. On or about September 30, 2002, Bache paid Horton \$2,040.00 by check, as a down payment.
3. On or about October 2, 2002, Horton began the work by removing the shingles from the shed and the garage. On or about October 3, 2002, Horton ceased work. On October 8, 2002, Horton informed Bache that the shingles for the job were not in stock and that more shingles should arrive on October 15 or 16, 2002.
4. As of January 31, 2003, Horton failed to replace the shingles on the shed and the garage. On or about January 31, 2003, Bache himself replaced the shingles on the garage.
5. On or about the first part of March 2003, Horton returned to the job and replaced the shingles on the shed and agreed to refund Bache \$1,200.00 for unfinished work (no work on the garage and no work on the house).
6. As of April 10, 2003, Horton failed to return the funds received for work not performed.
7. Horton failed to operate in the name in which the license was issued.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(8) (Effective September 1, 2001)

Horton's failure to make use of a legible written contract which contains all provisions specified is a violation of Board Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend a monetary penalty of \$250.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

Horton's failure to return the funds received for work not performed is a violation of Board Regulation 18 VAC 50-22-260(B)(16). Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

Count 3: 18 VAC 50-22-230(A) (Effective September 1, 2001)

Horton's failure to operate in the name in which the license was issued is a violation of Board Regulation 18 VAC 50-22-230(A). Therefore, I recommend a monetary penalty of \$400.00 be imposed.

By:

Charles W. Falwell
Presiding IFF Board Member
Board for Contractors
Date: September 16, 2003

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 068255 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**IN RE: KYLE W. HARRIS
T/A KYLE HARRIS CONSTRUCTION
APPLICATION**

FILE NUMBER: 2003-03533

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 16, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Kyle W. Harris, t/a Kyle Harris Construction (Harris) on August 19, 2003. The following individuals participated at the conference: Kyle Harris, Applicant; Jennifer Kazzie, Staff Member; and Charles W. Falwell, Presiding Board Member.

Summation of Facts

1. Harris applied for a Class A Contractor's license on or about March 25, 2003, and disclosed a judgment awarded to Masten Lumber & Supply Company, Inc. against Harris-Butler Custom Building, Inc. in the amount of \$20,987.57 with fees, and interest bringing the total amount due to \$28,192.71.
2. On or about June 19, 2003, the Board's licensing staff provided the Regulatory Programs Division Application Review Informal Fact Finding Conference Referral Memorandum, which states the reasons the license was not issued.
3. During the IFF and per a letter received March 25, 2003, Harris stated that the corporation lost approximately 85% of its equipment and tools in an industrial fire. All creditors were financially satisfied except for Masten Lumber & Supply Company, Inc. which would not agree to payment terms. Subsequently, Harris filed for bankruptcy protection.

Conclusion and Recommendation

Based upon the record, including testimony by Harris, I feel Harris had no choice but to file for bankruptcy due to the unfortunate circumstances that were incurred because of the fire. I feel like the decision to file bankruptcy should not be held against Harris' desire to become licensed, nor do I feel the bankruptcy detrimentally affects Harris' character. Therefore, I recommend Harris' application be approved.

By: _____

Charles W. Falwell
Presiding IFF Board Member
Board for Contractors

Date: September 16, 2003

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**IN RE: WILLIAM A. REYNOLDS
APPLICATION**

FILE NUMBER: 2004-00211

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 16, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to William A. Reynolds (Reynolds) on August 27, 2003. The following individuals participated at the conference: William A. Reynolds, Applicant; Jennifer Kazzie, Staff Member; and Charles W. Falwell, Presiding Board Member.

Summation of Facts

1. Reynolds applied for a Tradesman license on or about May 1, 2003, and disclosed criminal conviction(s).
2. On or about July 1, 2003, the Board's licensing staff provided the Regulatory Programs Division Application Review Informal Fact Finding Conference Referral Memorandum, which states the reasons the license was not issued.
3. By letter dated January 17, 1996, Stephanie Hardenburg, MA, LPC, Certified Forensics Specialist, confirms that Mr. Reynolds has successfully completed his one year tenure with the Woodbridge sex offenders' group.
4. During the IFF, Reynolds stated that the Sodomy charge involved his younger brother (seven years younger) many years ago. Reynolds also stated that the DWI charge was a one time occurrence during a time when he was experiencing marital difficulties with his wife, who was in attendance at the IFF. Reynolds stated that he has successfully completed counseling for both issues.

Prior Criminal Convictions

§ 54.1-204 of the Code of Virginia. Prior convictions not to abridge rights.

B. In determining whether a criminal conviction directly relates to an occupation or profession, the regulatory board shall consider the following criteria:

1. The nature and seriousness of the crime;

Reynolds was convicted of Sodomy, a Felony, and DWI, a Misdemeanor.

2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;

The purpose of licensure is to protect the health, safety, and welfare of the public. Based upon Reynolds testimony and credibility at the IFF, it does not appear that Reynolds would be a danger to the public.

3. The extent to which the occupation or profession might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;

It does not appear that granting Reynolds a license would encourage any further criminal activity.

4. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the occupation or profession;

The conviction's would not affect Reynolds ability to perform the duties of a licensed Tradesman.

5. The extent and nature of the person's past criminal activity;

Reynolds was convicted of Sodomy, a Felony, and DWI, a Misdemeanor.

6. The age of the person at the time of the commission of the crime;

Reynolds was approximately twenty (20) years of age at the time of the crime for Sodomy.

7. The amount of time that has elapsed since the person's last involvement in the commission of a crime;

The last offense, DWI, occurred on or about September 27, 2000.

8. The conduct and work activity of the person prior to and following the criminal activity;
and

During the IFF, Reynolds stated that he worked at a variety of odd jobs after high school.

By letter dated June 1, 2001, Howard L. Ritchie, Jr., Business Manager, International Brotherhood of Electrical Workers, states the following: "Mr. William A. Reynolds, Social Security Number, 242-49-9902, has worked for the following signatory electrical contractors: Walker Seal Companies, Inc. From 3/95 to 12/95; Al Gleeson Electric Co. From 12/95 to 8/96; DTS Electrical Construction From 8/96 to 3/00, and Dynalectric Co. From 3/00 to present. Mr. Reynolds has completed in excess of 240 hours of classroom instruction and 13,900 hours of on-the-job training."

During the IFF, Reynolds stated that he is currently working for T.N.C. Construction performing electrical work.

9. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.

Reynolds was not incarcerated.

Conclusion and Recommendation

Based upon the record, including the information obtained from the Central Criminal Records Exchange, and in consideration of the criteria outlined in § 54.1-204.B, I recommend Reynolds' application be approved.

By: _____

Charles W. Falwell
Presiding IFF Board Member
Board for Contractors

Date: September 16, 2003

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

**RE: DAVID C. ALDERMAN
T/A L & D HOME IMPROVEMENT CONSTRUCTION
LICENSE NUMBER 2705 054017**

FILE NUMBER: 2002-03444

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 16, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to David C. Alderman, t/a L & D Home Improvement Construction on August 19, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Charles W. Falwell, Presiding Board Member. Neither Alderman, nor anyone on his behalf, appeared at the IFF.

Background

On or about July 16, 2001, Leanna Barringer (Barringer) received a proposal from "Solid Builders," in the amount of \$1,150.00, to wire two columns, install lights with timer, and install underground wiring to switchbox under the house at 1400 Quiet Court, Portsmouth, Virginia. David Alderman (Alderman) signed the proposal.

On or about July 16, 2001, Barringer paid Alderman \$500.00 as a down payment. On or about August 4, 2001, Barringer paid Alderman \$650.00 as the balance of the contract price. The checks were made out to David Alderman and not Solid Builders.

In the latter part of 2001, Alderman was terminated as Vice President of Solid Builders Inc. Solid Builders Inc. did not authorize this contract nor were they aware of it prior to this complaint.

On May 22, 2002, the licensing records of the Board for Contractors were reviewed, and revealed David C. Alderman, t/a L & D Home Improvement Contracting was issued Class C Contractor's license number 2705054017, with a Home Improvement (HIC) specialty on January 7, 2000. Alderman was issued this license as a sole proprietorship.

Summation of Facts

1. Between July 16, 2001 and August 4, 2001, Alderman performed the work. Alderman failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed.

2. On or about July 16, 2001, Alderman installed the wiring for the lights underground to a switchbox under the house. This work required an electrical specialty because it involved making a connection to an energized electrical circuit.
3. On or about June 7, 2002, Investigator Phillip Underwood, the Board's Agent, sent a certified allegation letter to Alderman to the address of record of 109 Gee Street, Portsmouth, Virginia 23702, which included a copy of the complaint and a request for a written response to the complaint filed with the Board. On or about June 11, 2002, Delores Alderman signed for and accepted the certified letter.
4. On or about November 13, 2002, the Board's Agent obtained a telephone number from telephone information for David Alderman, 109 Gee Street, Portsmouth, Virginia 23702. The Board's Agent called 757-399-4193, the telephone number obtained from information. A male answered the phone at 757-399-4193 and said that David Alderman did not reside at that address.
5. As of November 14, 2002, Alderman failed to respond to the Board's Agent's request for information and written response to a complaint filed with the Board.
6. On or about April 8, 2002, Sue Everett (Everett), Administrative Coordinator, Portsmouth Code Compliance Office, advised that a permit was required for the electrical work to be performed at 1400 Quiet Street, Portsmouth, Virginia.
7. As of June 3, 2002, Alderman failed to obtain the required permit. The Code Enforcement Office is not planning to prosecute the contractor.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(8) (Effective May 1, 1999)

Alderman's failure to make use of a legible written contract which contains all provisions specified in the regulation is a violation of Board Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend a monetary penalty of \$250.00 be imposed.

Count 2: 18 VAC 50-22-230(A) (Effective May 1, 1999)

Alderman's failure to operate under the name in which the license is issued is a violation of Board Regulation 18 VAC 50-22-230(A). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(23) (Effective May 1, 1999)

Alderman's actions of practicing in a classification or specialty service for which he is not licensed is a violation of Board Regulation 18 VAC 50-22-260(B)(23). Therefore, I recommend a monetary penalty of \$750.00 and license revocation be imposed.

Count 4: 18 VAC 50-22-260(B)(13) (Effective September 1, 2001)

Alderman's failure to respond to an investigator seeking information in the investigation of a complaint filed with the board is a violation of Board Regulation 18 VAC 50-22-260(B)(13). Therefore, I recommend a monetary penalty of \$750.00 be imposed.

Count 5: 18 VAC 50-22-260(B)(6) (Effective May 1, 1999)

Alderman's failure to obtain the required permit is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

By:

Charles W. Falwell
Presiding IFF Board Member
Board for Contractors
Date: September 16, 2003

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 054017 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: KIDD AND CO., INC.
T/A KIDD CUSTOM HOMES/UNDERGROUND SERVICES
FIRST/US FIRST
LICENSE NUMBER 2705 011835**

FILE NUMBER: 2003-00801

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 16, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Kidd and Co., Inc., t/a Kidd Custom Homes/Underground Services First/US First on August 19, 2003. The following individuals participated at the conference: Kimberly Ray Kidd, Vice President of Kidd and Co., Inc.; Jennifer Kazzie, Staff Member; and Charles W. Falwell, Presiding Board Member.

Background

On or about September 2, 2002, Frank Ware (Ware) entered into a written contract with Kidd and Co. Inc. (Kidd), t/a Kidd Custom Homes/Underground Services First/US First, in the amount of \$1,650.00, to replace the water line at 204 E. 37th Street, Richmond, Virginia.

Summation of Facts

1. On or about September 2, 2002, Kidd replaced the water line for Ware. Kidd performed plumbing work at 204 E. 27th Street.
2. On January 7, 2003, the licensing records of the Board for Contractors were reviewed, and revealed Kidd and Co. Inc., t/a Kidd Custom Homes/Underground Services First/US First, was issued Class A Contractor's license number 2705011835, with Building ("BLD") and Highway heavy ("H/H") contracting specialties.
3. On or about September 3, 2002, Carroll Plumbing & Heating Inc. was issued a plumbing permit for the work at 204 E. 37th Street.
4. On or about October 8, 2002, Investigator Becky C. Angelilli, the Board's agent, spoke with S. Chapman (Chapman) of Carroll Plumbing & Heating Inc. Chapman told the Board's agent that Kidd performs plumbing work for Carroll Plumbing & Heating Inc. under Carroll Plumbing & Heating Inc.'s license.
5. According to the Board's 2001 Regulation 18 VAC 50-22-20, the highway heavy contractors classification allows contractors to install, maintain, or dismantle water, gas, and sewer connections to residential, commercial, and industrial sites, subject to local ordinances.
6. During the IFF, Kimberly Kidd stated that the work involved the replacement of the service line from the meter to the house. She also stated that due to the urgency of the replacement, the work was performed on Labor Day, therefore, a permit could not be obtained prior to performing the work. Since Kimberly Kidd was out of town, Carroll obtained the permit and met the inspector at the job site.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(27) (Effective September 1, 2001) (Kidd's actions of practicing in a classification or specialty service for which it is not licensed)

I recommend Count 1 be closed with a finding of no violation.

Count 2: 18 VAC 50-22-260(B)(18) (Effective September 1, 2001)

Kidd's actions of assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq) or Chapter 11 (§ 54.1 -1100 et seq.) of Title 54.1 of the Code of Virginia is a violation of Board Regulation 18 VAC 50-22-260(B)(18). Even though Carroll did obtain the permit, Kidd is licensed to perform the work and the work passed inspection. Therefore, I recommend no sanction be imposed.

By:

Charles W. Falwell
Presiding IFF Board Member
Board for Contractors
Date: September 16, 2003

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 011835 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.